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# LAW REPORTS*

## AMERICAN REPORTS.

By Article III of the Constitution of the United States of America, the judicial authority of the United States is vested in the Supreme Court and in such other inferior Courts as the Congress may from time to time establish. The jurisdiction of these Courts is confined to cases—

(1) arising under the Constitution.

(2) relating to the administration of the Laws of the United States.

(3) under Admiralty and Maritime Jurisdiction.

(4) in which the United States is a party.

(5) between two or more States.

(6) between citizens of two States.

(7) between citizens of the same State claiming under grants from two States.

(8) between citizens and foreigners.

In the case of ambassadors, consuls, etc., the Supreme Court itself has original jurisdiction. The United States are divided into Districts and each District has a District Judge. In addition, there are Circuit Courts presided over by Supreme Court Judges and other Judges known as Circuit Judges.

The Supreme Court consists of a Chief Justice and eight Associate Justices. There are nine Circuit Courts each consisting of a Justice of the Supreme Court and a Circuit Judge and 56 District Courts each with a District Judge. Each Circuit comprises several States. The Supreme Court Justices, in addition to their Circuit work, meet in Banc annually at Washington.

*The sixteenth of a series of lectures arranged by the University of Madras delivered by Mr. B Sitarama Rao, Advocate, Madras High Court.

The Districts cover each a State or a part of a State. Appeal lies from the District to the Circuit Court when the matter involved is above 500 dollars and from the Circuit to the Supreme Court when the matter involved is 5,000 dollars and above.

In each State there are three grades of Courts—a Supreme Court or Court of Appeal, Superior Courts of Record and Local Courts. The names and the relations of these vary largely from State to State. Most of the original 13 colonies possessed separate Courts of Chancery after the English model and in this they were imitated by many of the earlier of the New States but special Chancery Courts now exist only in a few of the States in the east and south. In other States the Common Law Judges have also equity jurisdiction. In four States, New York, North Carolina, California and Idako, there has been a complete fusion of law and equity. In Colonial days, the Superior Judges were appointed by the Governors except in Rhode Island and Connecticut, where the legislatures elected them. These precedents were followed in all the early constitutions except in Georgia, where election by the people was established. During the democratising period (1812-1860) the system of popular election was extended specially in the new States and at present this system prevails in 32 States including practically all the new States and four of the original States, New York, Pennsylvania, Maryland and North Carolina. Five of the original thirteen have their Judges elected by the legislature, and in five others together with Maine, Mississippi and Louisiana among the newer States, they are appointed by the Governor, subject to the approval of the Executive Council of the Senate. Local Judges are generally chosen by the votes of the District in which they hold Court.

Originally, the Superior Judges were in most States appointed for life and held office during good behaviour but only four States now retain that system. Eight to ten years is now the average term; in New York it is 14 years; in Pennsylvania 21, but a Judge is always re-eligible. Salaries too are small in most States.

Popular election, limited terms and small salaries have all tended to lower the character of the judiciary. In not a few States the Judges are men of very moderate abilities and limited learning and are decidedly inferior to the best of the men that practise before them. The evils of popular election were best illustrated in New York, where one of the most celebrated Courts of America became a byeword for reproach during

the first years of the introduction of the new system and even now it can hardly be said to have regained its old dignity and position. In fact, there is a lot of complaint against the judiciary all over America, but it is said that in most of the States the Bench is respectable, while in some it is occasionally adorned by men of the highest character and eminence. Things would have become much worse but for the watchfulness of the Bar.

There is no appeal from the highest State Court except in those cases where a question of federal law is involved. In such cases the suit itself may be removed to the Federal Courts.

The source of the American Law is the common law of England. When the Governments of the several Colonies on the Atlantic Coast declared their independence in 1775 and 1776, they each adopted the common law of England as it then existed and had till then been administered as the common law of the land. For example, New York adopted the common law as it existed on the 19th April, 1775, as the law of the State. All English statutes and decisions in force on that day are a part of the common law of New York, except in so far as they may have been modified, repealed or declared inapplicable. Each of the original States did substantially the same thing and equally in the States since admitted the common law prevails by the action of the people except in case of Louisiana where the Code Napoleon forms the fundamental law. Many of the English statutes like the statute of Frauds, of Limitation, of Wills and of Charitable Uses have been substantially re-enacted in the various States. The decisions of the Courts of one State are not binding on the Courts of another State, nor for the matter of that the decisions of the Federal Courts, but they have developed a rule of comity which is making for uniformity. In addition to the common law of the States that is thus growing up, a common law of the United States based equally on the common law of the States and the common law of England is growing up by the action of the Federal Courts. Even a peace of the United States as distinguished from the peace of the individual States' decisions have come to talk of Prior to 1800 there were only one or two reports, and reporting went on much on the same lines as in England, but since then there has been a steady tendency towards official reporting so that to-day the reporters of the Supreme Court of the United States and of most of the State Courts of the last resort are public officials elected or appointed. In the State of New York, one of the Judges

themselves superintends the reporting work. In some of the States only such of the decisions are reported as are pronounced reportable by the Judges and some of the Courts prefer that their decisions should be cited only from the official volumes. Nevertheless there is no rule that only official reports could be cited in Courts. In one respect the rule is less strict than in England. In England, newspaper report of a case will not be allowed to be cited before any Court. Lord St. Leonards is reported to have said : "Every man is and must be left at liberty to go into Court and report what he pleases. The newspapers have and will continue to have that privilege. No Judge can properly refuse to hear a case quoted at the Bar, but a Judge would not allow a newspaper report to be quoted nor would he act upon an important decision quoted from a report hastily published and without further examination." In America, a Court will not refuse to listen to a newspaper report if none other is available though it would not generally be regarded as a satisfactory authority.

In fact, there are many reports of decisions of the Courts of last resort found in regular though unofficial series, others in legal journals and professional periodicals of various sorts. The National Reporter system organised by the West Publishing House of St. Paul, Minnesota, includes two periodicals devoted to the decisions of the various Courts of the United States called respectively the Supreme Court Reporter and the Federal Reporter and several other weekly issues each devoted to a group of States, bearing such geographical titles as the Atlantic Reporter, Pacific Reporter, etc. These contain very prompt reports of all the decisions of the Courts of last resort in all States, while the *New York Supplement* gives the decisions of the intermediate and inferior Courts of New York. As judgments are always written, in the matter of reporting the official reports have no special advantage over the other reports. In point of promptness, the official reports always lag behind the non-official reports. As the judgments are full, it is not usual in America to give either the facts or the arguments. Besides these, there are other excellent series of selected cases as well as those exclusively dealing with the decisions upon some major branch of the law, such as Railroads, Corporations, Bankruptcy, Insurance, Mining, etc. The number of independent jurisdictions and of reports necessarily presents great difficulties in the way of the practitioner and, in order to cope with these, private enterprise

produces a whole body of annotated reprints, digests and other apparatus of reference for which there is nothing analogous in England.

Lawyers' Reports annotated contain cases selected from the current decisions of the Courts of last resort of the several States as well as those of the United States Supreme and other Federal Courts. The series began in 1888 and comprises four volumes for a year. In 1906, when 70 volumes had been published, a new series was begun. American Decisions are a series of 100 volumes purporting to contain cases of general value and authority from the earliest State Reports up to the year 1869. The American Reports form the continuation of the American Decisions and comprise cases selected from 1869 to 1887 in 60 volumes. American State Reports continue the series still further and come up to 1911. The three series are styled in America as the Trinity. The American and English annotated cases began in 1906. They contain important cases selected from the current American, Canadian and English Reports. It has since merged with the American State Reports.

Fifty years ago, there was hardly any annotated report in the United States of America, but to-day it is difficult to find a case not annotated. Annotations are of various kinds and degrees. Some give only references to places where cases on the subject will be found collected; some show how the case has been subsequently dealt with, whether approved, dissented from or overruled; some give a collection of cases more or less on the point; some give an exhaustive collection of cases on the point, making an attempt to elucidate the principle involved in the case. The most complete one gives an exhaustive digest of cases indicating the principles involved and specially noting the best and reasoned cases on the subject. These annotations are classified in American terminology as annotations simply, annotations extra and critical. Extra annotations trace the judicial history of each case down through all later cases which have cited it.

The Reports of the Supreme Court of the United States began in 1790. From that time up to date we have regular official reports. Till 1875 they used to be named after the Reporters[1]. From 1875 the Reports are called United States Supreme

(1) Dallas (1790-1800), Cranch (1800-1815), Wheaton (1816-1827), Peters (1827-1842), Howard (1843-1860), Black (1861-1862) and Wallace (1863-1875).

Court Reports and they continue up-to-date. We have an extra annotated edition of these known as Lawyers' Co-operation Edition in 57 volumes. We have also condensations and selections like Peter's Condensed Reports (1790-1827), Curtis United States Decisions (1781-1854) and Miller's United States Supreme Court Decisions (1854-1862). These reports are of the highest authority and are cited with great deference all over America, even where the decisions are not binding. Circuit Court Reports are also cited with respect in America. The Reports of the First Circuit consisting of Massachussets, Maine, New Hampshire and Rhode Island begin from 1812[2].

The reports of the second circuit consisting of New York, Connecticut and Vermont start from 1810[3].

The circuits have been re-arranged in 1866. The old third circuit consisting of Pennsylvania and New Jersey has reports from 1781[4].

The old fourth circuit consisting of Virginia, Maryland and Delaware has reports from 1793[5].

The new fourth circuit reports are Taney's decisions by Johnson (1865-1869) and Hughes (1870-1880).

The fifth circuit (new) has its reports by Woods.

The sixth circuit (new) reports are Bond (1855-1871), Brown's Admiralty (1859-1875) and Flippin (1859-1877).

Seventh circuit (old) Maclean (1829-1884).

Seventh circuit (old and new) Bissel (1851-1878).

Eighth circuit reports are Miller's decisions, Woolworth (1863-1869), Dillon (1870-1880), and M'Crary and so forth.

The ninth circuit (old) reports are Hampstead (1839-1856).

The ninth circuit (old and new) has Macallister (1855-1859), Deady (1861-1869) and Lawyer (1870-1884).

From 1892 we have separate reports known as Circuit Court of Appeal Reports. The Circuit and District Courts are also reported by Abbott (1863-1871) and by the Federal Reporter from 1880. The various District Courts have also their old

(2) The reporters are Gelison (1812-1815), Mason (1816-1830), Sumner (1830-1839), Story (1839-1845), Woodbury and Minot (1845-1847), Curtis (1851-1856), Clifford (1858-1878), Holmes (1870 onwards) and Lowell (1865-1877).

(3) Paine (1810-1840), Blatchford (1845-1880) and so forth

(4) Dallas (1781-1806), Wallace 1801, Peters (1803-1818), Washington (1803-1827), Baldwin (1828-1833) and Wallace (1842-1862).

(5) Cell's Virginia Reports (1793-1825), Marshall's decisions by Brockenbrough (1802-1833) and Taney's decisions by Campbell (1836-1861).

reports, some of them like the District Court of Pennsylvania having reports from 1779. In fact, Hopkinson's judgments in the Admiralty reporting the decisions of the District Court of Pennsylvania seem to be the earliest report in the United States of America. All the decisions of the Circuit Courts and District Courts and Circuit Court of Appeals up to 1879 from the very beginning in 30 annotated volumes have been published under the name of Current Reports. In addition to these, patent cases are separately reported in Robb's Patent Cases (up to 1850), Fisher's Patent Reports (1821-1850), Witman's Patent Reports (1810-1874), Patent Office Gazette and Patent Office Decisions, Banning and Ciroden Patent Cases. We have also certain reports known as Interstate Commerce Reports (1887-1913). Bankruptcy Cases are separately reported in National Bankruptcy Register (1867 up to 1880) and under the name of American Bankruptcy Reports, 1899.. In addition to these we have the American Law Times Reports of Leading Cases (1868-1873), Law Times Reports (N. S.) (1874-1877), Law and Equity Reporter (1874-1877) and the two last are continued by the Reporter 1878 onwards, which deal with the United States and State Court Reports. The Congress Election Cases from 1789-1876 are reported in a series known as Contested Election Cases (1789-1878). Other Reports dealing with special subjects are American Corporation Cases (1868-1887) and (1883-1906) and (1906-1914), American Criminal Reports (1877-1912), American Electrical Cases (1872-1908), American and English Railway Cases (1881-1896), N. S. (1896-1913), Street Railway Reports (1903, etc.), American Negligence Cases (1789-1896), (1896-1906), Negligence and Company Cases (1911-1913), Probate Reports (1877-1896) again annotated (1897 onwards), Railroad and Corporation Reports (1888-1896), Banking Cases (1900-1905), Morrison's Mining Reports (1883-1906) and Municipal Corporation Cases (1900-1904).

So far we have dealt mainly with the Federal Court Reports.

The New York Common Law Reports contain all the Reports of Common Law Courts till 1847 when the Civil Procedure Code was adopted. The New York Chancery Reports report the opinions of the old Chancellors. Each State has its own State Court Reports. Connecticut has reports from 1785[6]. Kentucky also has its reports from 1785[7].

(6) They are Kirby (1785-1788), Root (1889-1898), Day (1802-1818) and since 1814 we have the series known as Connecticut reports.

(7) Hugless (1785-1801), Sneed (1801-1805), Hardin (1805-

There is also a report known as Kentucky Law Reporter.

Louisiana has reports from 1809[8]. Massachussets from 1804[9]. Michigan from 1836[10].

New York has the largest and most varied kind of reports which are some index also to their importance. There are separate reports for Law, Chancery, Common Plea Practice and Criminal Cases and for Court of Appeals. For Supreme Court we have Barbour's Supreme Court Reports (1847-1877), Lansingh's (1869-1873), Thompson and Cook's (1874-1875), Hun's (1874-1895) and Hun's Appellate Decision (1896 onwards). The Inferior Court Reports appear from 1888 in the *New York Supplement*. Pennsylvania has also an equally respectable record. The Supreme Court Reports of that State date from 1754[11].

In addition to these we have reports of various inferior Courts like County Court Reports, District Court Reports, Recorder's Decisions, Election Cases, Reporter and various other legal journals.

New Jersey is another State which has valuable reports from early times. It has separate reports for Law and for Equity. The Reports at Law begin from 1790[12]. The Chan-

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1808), Bibb (1808-1817), Marshall (1817-1821), Littel (1822-1824), Monroe (1824-1828), Marshall (1829-1832), Dane (1833-1840), Monroe (1840-1857), Metcalfe (1858-1863), Duvall (1863-1866), Bush (1866-1879), and Kentucky from 1879 onwards.

(8) Martin (1809-1823), Martin (N.S.) (1823-1830), Louisiana (1830-1841), Robinson (1841-1846), Louisiana Annual (1847), Louisiana Reports 1901.

(9) They are Massachussets (1804-1822), Pickering (1822-1839), Metcalfe (1840-1847), Cushing (1848-1853), Gray (1854-1860), Allen (1861-1867), and Massachussets Reports from 1867 onwards.

(10) Harrington Chancery (1836-1842), Walker's Chancery (1842-1845), Douglas (1843-1847) and Michigan reports from 1847 onwards. There are also Nisi Prius Decisions, such as Brown's Nisi Prius (1869-1871) and Prius.

(11) Dallas (1754-1806), Addison (1791-1799), Yeates (1791-1808), Binney (1799-1814), Seargeant and Raule (1814-1828), Raule (1828-1835), Wharton (1835-1841), Watts and Seargeant (1841-1845) and State Reports (1844 onwards).

(12) Coxe (1790-1795), Pennington (1806-1813), Southand (1816-1820), Halsted (1796-1804, 1821-1831), Green (1831-1836), Harrison (1837-

cery Reports date from 1830[13]. Maryland is another old State having reports from very long time—from 1658. New Hampshire has them from 1816 and Ohio from 1821. South Carolina also has separate Reports at Law and at Chancery. Law starts from 1783 and Chancery from 1784 and continue up to 1868. From that date a new series under the name South Carolina Reports commence and are running up-to-date. North Carolina has reports from 1778. Georgia has reports from 1805, Illinois from 1819, Indiana and Maine from 1820. Each of the other States has its own reports each from the date of its admission or formation. Alabama from 1820, Alarka from 1867, Arizina from 1866, Arkansas from 1837, California from 1850, Colorado from 1864, Dakota from 1867, Delaware from 1832, Florida from 1846, Idaho from 1866, Indiana and Texas from 1896, Iowa from 1839 and Kansas from 1862.

Virginia has reports from 1730[14] and Virginia reports from 1886. Vermont has reports from 1789, Chipman from 1789-1791, Chipman (D.) from 1789-1825, Taylor from 1800-1803, Brayton from 1815-1819, Arken from 1825-1827, Vermont from 1826, Michigan from 1836, Minnesota from 1851, Mississippi from 1820, Missouri from 1821, Montana from 1868, Nebraska from 1854, Nevada from 1865, New Mexico from 1852, North Dakota from 1867, Oklahoma from 1870, Oregan from 1853, Philippine Island from 1898, Porto Rico from 1805, Rhode Island from 1828, South Dakota from 1867, Texas from 1840, Utah from 1871, Washington from 1854, West Virginia from 1863, Wisconsin from 1839 and Wyoming from 1870.

This short survey of the reports is sufficient to give an estimate of the magnitude of the American reports and we that have begun to complain of the multitude of reports in India can realise the

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1842), Spencer (1842-1846), Zabritkie (1847-1855), Dutcher (1855-1862) and Vroons (1862 onwards).

(13) They are Saxton (1830-1882), Green (1832-1846), Halsted (1846-1853), Stockton (1852-1858), Beasley (1858-1860), McCarter (1861-1862), Green (1862-1876), Stewart (1877-1885), Dickinson (1889-1905), Nobbins (1905-1908) and Buchanan 1909 onwards.

(14) Jefferson (1730-1772), Wyther Chancery (1790-1799), Virginia Cases Criminal (1789-1826), Washington (1790-1796), Call (1797-1825), Hening and Minford (1806-1810), Minford (1810-1820), Gilmer (1820-1821), Randolph (1821-1828), Leigh (1829-1842), Robinson (1842-1844), Grattan (1844-1880), Virginia Reports from 1880.

difficulties of the American Practitioner. Life of a practitioner becomes tolerable only by the existence of the numerous digests, select cases and annotations and other labour-saving apparatus which give at a moment's notice in one place a more or less complete list of decisions of cases on a given point more or less scientifically arranged differentiating the reasoned cases on which the practitioner might count at the time of the argument.

These reports do not all bear the same authority. The decisions of the Supreme Court of the United States are binding on all the inferior Federal Courts and are to be preferred by those courts when they are in conflict with the decisions of the other courts on any question. The State Courts including the Supreme Courts are equally bound by the decisions of the United States of America on all questions relating to the constitution of the United States, or the validity of the Acts of the Congress. On questions of the construction of the Acts of various State Legislatures or on questions of local law, the Supreme Court of the United States feels itself bound by the decisions of the States from which the cases come though the inferior Federal Courts are bound to follow the decisions of the Supreme Court till recalled by that Court itself. Even on those questions, the opinion of the United States Supreme Court or even of the Circuit Courts is received with great respect by the State Courts and, if not in conflict with their own decisions, is followed. Upon questions of general common law and upon such other subjects as depend upon general principles rather than on any local regulation such as a doctrine of criminal law or a rule of evidence, the decision of the Supreme Court has equal weight with the decisions of the Courts of last resort of each State, though the Courts generally follow their own precedents in preference to those of United States Supreme Court. As between co-ordinate Courts the rule of comity is not followed with the same strictness as in England as was to be expected from the multiplicity of Courts and the necessary difference in the intrinsic authority of the judgments of the various Courts. They equally with the English Courts regard the so-called rule of comity "as something more than mere courtesy which only implies deference to the opinion of others", but the obligation to follow is not considered imperative, for if it were otherwise, says the same authority, "the indiscreet action of one Court might become a precedent increasing in weight with each successive adjudication until the whole country is tied down to an unsound principle." With them "it declares not how a case

shall be decided", but "how it may with propriety be decided". Greater respect is paid to a course of decisions than isolated decisions. Much more deference is paid to the decisions of certain courts and certain Judges than those of others, and again greater deference is paid to the decisions of certain Courts on certain points than on others. The relative standing of various Courts and even the strength of the same Court at different times varies. A Judge of exceptional ability sometimes adorns and dignifies a Court, otherwise mediocre and common place, for example, Judges Cooley and Campbell of the Supreme Court of Michigan, or Judge Greene of the Supreme Court of Appeals of West Virginia, whose decisions carry great authority. Some Courts are always of commanding authority, *e.g.*, the Supreme Court of the United States. The Judges are usually men of first-rate ability and character. Chief Justices Marshall and Tuney and Justices Miller, Bradley and Story are pre-eminent. Some of the Judges of the Circuit Court of Appeals also speak with the greatest authority, for instance Blachford on Patents and Judge Dillon on Corporations. The Federal Reporter and the decisions of the Circuit Court of Appeals are cited with respect throughout America. Among the State Courts the decisions of the Court of Appeals of New York and the Supreme Court of Massachussets have the greatest currency and authority in the other States To the decisions of Chief Justices Parsons and Shaw of Massachussets, Courts have always attached very great weight. The New Jersey Law Reports and New Jersey Equity Reports also are specially valuable. The Pennsylvania report is of unequal merit, but Chief Justice Gibson of the Court is spoken of with the greatest respect. Among the older Judges of that State, Shearwood, Black, Doodward and Paxson were conspicuous. The decisions of the Supreme Court of Louisiana are considered of special authority on commercial questions, of California and Colorado on Mining Law, of Kentucky on title to land. The Supreme Court of Appeal of Virginia, South Carolina and Arkansas prior to Civil War were able Courts. The decisions of Maine, Connecticut and Wisconsion are also generally of respectable authority. Vermont, New Hampshire, Georgia, Tennessee, Ohio, Missouri, Indiana and Texas are not of high authority generally.

The principle that precedents may become obsolete by reason of change of circumstances or unsuitability to the new conditions is applied much more freely in America than in England though the principle is not altogether ignored in England also.

For instance, Chief Justice Willes said in a case "Where the nature of things changes, the rules of law must change too. When it was holden that deer were not distrainable it was because they were kept principally for pleasure and not for profit and were not sold and turned into money as they are now, the rules concerning personal estates which were laid down when personal estates were but small in proportion to lands are quite buried both in Courts of Law and Equity now that personal estates are so much increased and become so considerable a part of the property of this kingdom." The opportunities for applying the rule are naturally not so great in England as in America where the Courts have had to consider from the beginning as the Indian Courts had to—how far the Common Law should at all be applied to the widely differing circumstances of the American society. The American Law is the residuum left after such process of elimination and should be particularly useful in India, the physical and climatic conditions of India being in many respects similar to those of the United States of America. Owing to differing physical conditions the English rule as to riparian rights has been abandoned in some of the States in favour of the rule of prior appropriation. Similarly the English rule-making navigability depend upon ebb and flow has been abandoned and instead navigability in fact has been made the test. This rule has been adopted, it will be found, in India. The rule of English Law against sale of minor's real property has been rejected on the ground that the basis of the rule, *viz.*, different lines of inheritance apply to different kinds of estate not being recognised in America, the rule itself has been held inapplicable. Similarly in several of the States and by the Supreme Court of United States it has been held that the rule of common law making the cattle owner liable for trespass though the land is unfenced is considered so ill-adapted to the condition of America and in conflict with the practice that it is not recognised. . Again, the English Common Law is very strict as to cutting down of timber. The rigor of this rule has been much relaxed in America as was to be expected in a new country where land is very much more valuable without timber than with it. So again, the Supreme Court of Kansas has refused to recognise "such indescribable myth" as it calls "as vendor's liens." The market overt doctrine has also been held inapplicable to American conditions. Louisiana and some other States has also repudiated the common law doctrine that a boy under the age of 14 years could not commit rape on the ground of racial and physical differences.

This habit of constantly eliminating has made them more bold than English lawyers in rejecting old doctrines, for instance, the Supreme Court of Alabama has rejected the test of insanity laid down by English cases on the ground that it is inconsistent with the latest researches. The Massachussets Court has rejected the doctrine of identity by which a person is held disentitled to recover damages if the driver of his vehicle is contributory to the negligence of the defendant on the ground that it has become inapplicable by reason of business evolution.

Before applying the American precedents, one must make sure that the particular ruling is not the result of the peculiarly American conditions which might be different from the Indian conditions. The other troublesome factor about these decisions is the existence of numerous varieties of procedure and legislative enactments in that country and reliance on the conclusion itself without a preliminary enquiry into the conditions existing in a particular State in respect of these matters must be unsatisfactory. The means open to an ordinary practitioner or the Court of making such an investigation are in the highest degree limited. The Procedure, for instance in several of the States has been codified. New York has the distinction of producing the first code on the subject and the Indian Civil Procedure Code has taken many of its provisions from that Code. Connecticut has adopted the English Rules in 1879, New Jersey in 1912, and others have done more or less the same. The Procedure in some of the Courts however retains the old English character with reduplication of Courts, errors, re-hearings and bills of exceptions. Where there are Codes, it is said, they go into too many particulars leading to much inelasticity. Commercial Law has been codified in most of the States, California leading the way in 1869. But New York still retains the old Negotiable Instruments Law as it stood before the Bills of Exchange Act. The diversities in the law, in the jurisdictions and in the procedure are naturally most tantalising to a stranger to the system and add to it the insular prejudice, there is naturally considerable disinclination to cite American Cases in England. In India, Mr. Justice Subrahmania Aiyar began the practice of citing American precedents and it was continued by Justices Mukerjee, Das and Sundara Aiyar. It has received a set-back by the decision of the Privy Council in *Imambandi* v. *Mutsaddi*[1]. A writer in an American Journal in 1914 made a calculation of the American citations from 1876 to 1914 and has been able to find 251 citations from cases and 106 from

1 (1918) L.R. 45 I.A. 73 · I.L.R. 45 C. 878 : 35 M.L.J. 422 (P.C.).

American text-books, Lord Esher having to his credit 30, Lindley 18, Watson 14, Kennedy 12, Halsbury and Blackburn each 10. Marshall, he says, goes in for the largest praise, Story and Kent comes next, and Holmes also is spoken of with respect. References to recognised American text-books are less objectionable as generally the local peculiarities are likely to be noted there supplying the necessary corrective. Certain branches of law are much better developed in America than in England or at any rate it may be confidently said that we get better text-books on certain subjects there than you do in England and seeing that the methods of the writers in England and America do not vary, it is not a violent inference to make that the subjects have either come before the Courts oftener in America than in England or that they have received more elaborate treatment. For instance, the subjects of subrogation, jurisdiction, corporations and void judicial sales have received more attention in America than in England and it is but sheerest prejudice that could insist upon our shutting our eyes to light that might come from that quarter.

## SUMMARY OF ENGLISH CASES.

CALOW *v.* CALOW, (1928) 1 Ch. 710.

*Will—Construction—Contract for sale of part of devised land—Completion of sale subsequent to testator's death—Sale proceeds if pass under specific devise or residuary gift.*

Where, in a will made after a contract giving an option of purchase, the testator, knowing of the existence of the contract devises the specific property which is the subject of the contract, without referring in any way to the contract he has entered into, there is sufficient indication of an intention to pass that property to give to the devisee all the interest, whatever it may be, that the testator had in it. This rule applies where the testator has not limited the devise to the specific property the subject of the contract.

JENKINS *v.* JENKINS, (1928) 2 K. B. 501.

*Promissory note—Payee appointing one of the joint and several makers of the note as executor—Action by the executor after the payee's death on the note against the co-makers—Maintainability.*

Where the payee of a joint and several promissory note appointed one of the makers as executor under his will, and,

after the death of the payee (testator) probate of the will was obtained by the executor, and the executor brought an action on the promissory note against the co-makers of the note,

*Held*, that the action could not be maintained either at common law or in equity, for, in common law the debt was released on the death of the testator, and in equity the debt must be deemed to have been paid to the executor as such on the date of probate.

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MORE *v.* WEAVER, (1928) 2 K. B. 520.

*Defamation—Absolute privilege—Communications between solicitor and client.*

The defendant had lent money to the plaintiff to enable the latter to purchase and carry on a hotel. Subsequently differences arose between them as to what security should be given for the loan and as to the time when the loan should be repaid. The defendant consulted her solicitors and wrote certain letters to them which had reference to the business capacity, character and financial position of the plaintiff. The plaintiff instituted the present action for damages on the ground that these letters contained defamatory statements about the plaintiff.

*Held*, that the communications between the defendant and her solicitors were absolutely privileged and the action must fail.

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THE HARKAWAY, (1928) P. 199.

*Shipping — Negligence — Anchoring in shallow river without a buoy or warning.*

It is negligence on the part of a shipowner to leave an anchor in a shallow navigable river without a buoy or some other warning.

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H. *v.* H., (1928) P. 206.

*Divorce—Decree for judicial separation—Subsequent domicil in a foreign place—Wife's petition for dissolution of marriage in original country—Jurisdiction of Court.*

At the instance of the wife, a decree for judicial separation was pronounced on the ground of desertion in England

which was the domicil of the parties. Subsequently, the husband went away to France and lived there. The wife petitioned in England for dissolution of marriage on the ground that the husband lived in adultery in France. The husband appeared under protest and contended that he had domiciled in France and therefore no decree for dissolution could be passed in England.

*Held* (1) that the jurisdiction to decree dissolution of marriage depended upon the domicil of the husband at the commencement of the proceedings and independent authority to dissolve the marriage could not exist in two Sovereign States simultaneously,

(2) that the husband by deserting his wife in one domicil would not be estopped from asserting another domicil which he acquired subsequently and the wife would not thereby become entitled to determine the forum of proceedings for dissolution, and

(3) that the decree for judicial separation did not from its date stereotype the matrimonial domicil or render it incapable of alteration without the consent of the wife.

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KEYSTONE KNITTING MILLS TRADE MARK, *In re* : 97 L.J. Ch. 316.

*Trade Mark—Legal proceedings for removal from register—Proceedings begun before, but motion heard after, seven years—Effect—Trade Marks Act, S.* 41.

The expression "all legal proceedings" in Section 41 of the Trade Marks Act is intended to denote every kind of legal proceeding including an application for the rectification of the register of trade marks. The expression is not used to denote the steps in a legal proceeding but the legal proceedings themselves.

The crucial date which determines whether a particular legal proceeding is a proceeding in which, according to Section 41, the trade mark is to be taken to be valid, is the commencement of such proceeding and the section does not apply to any legal proceeding commenced before the expiration of the seven years' period although the actual hearing takes place after the expiration of the seven years.

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FORD, *In re* : THE TRUSTEE *v.* RESTELL, BROWN & Co., *Ex parte*, 97 L. J. Ch. 334.

*Bankruptcy—Reputed ownership—Custom to deliver goods to dealer on approval—Bankruptcy Act, Section* 38 (*c*).

Where a trade custom was proved to exist in the antique furniture trade to deliver goods to a dealer on approval and goods were found upon the premises of one of such dealers who was adjudicated a bankrupt,

*Held*, that the goods could not be said to be in the bankrupt's possession so as to make him the reputed owner thereof within the meaning of Section 38 (*c*) of the Bankruptcy Act.

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*In the Matter of* THE PETITION OF A. B., 97 L. J. P. 104.

*Practice—Hearing in camera—General law.*

The general law of England is that the Courts exercise their powers in public, unless by some means they are directed to exercise them otherwise.

Where a question of mere status is concerned, it is essential that there should be publicity as a general rule; a question of status does arise where the question is as between legitimacy and illegitimacy.

It is not the law that, if publicity may deter a litigant from proceeding to obtain redress, there may be a suit *in camera* on his behalf.

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## JOTTINGS AND CUTTINGS.

*Lord Birkenhead on Divorce.*—The new weekly journal *Britannia*, under the direction of Mr. Gilbert Frankau, contains the first instalment of a discussion by Lord Birkenhead of "The Cruelties of Divorce." Lord Birkenhead has shown by his speeches in the House of Lords the interest which he takes in the subject, and his object is to reconcile the principle universally accepted in this country, that marriage should be monogamous and life-long, with the right of dissolution where its continuance becomes unjust. "A law which prevents the dissolution of marriage in cases where for the most cogent reasons of the interests of society such a union ought to be terminated is a law both cruel and unjust." He instances the refusal of annulment where the woman is, unknown to the husband, pregnant at the time of marriage by another man;

and the case of incipient lunacy, concealed by the wife's relations, developing after marriage. The modern discussion of the grounds of divorce began with the late Lord Gorell's famous judgment on the evils of separation orders in *Dodd* v. *Dodd* (1906, P. 189). On this followed the Royal Commission on Divorce, of which he was Chairman, and before which he laid the comprehensive statement of the Principles of Divorce Legislation which is reprinted at the end of his *Life* by Prof. De Montmorency. On the Reports of the Commission—Majority and Minority—little has been done, but the cheapening of Divorce Procedure has led to a great extension of divorce in practice. Lord Birkenhead's contribution to the discussion of the subject is opportune and welcome.—*L. J.*, 1928 p. 194.

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*Disappearing Ex-Lord Chancellors.*—If, as appears all too probable, Lord Birkenhead "goes into the City," the judicial strength of the House of Lords and of the Privy Council will be still further and greatly impaired, and at a time when the two final Courts of Appeal are in need of every available man. Of the ex-Lord Chancellors, who are left? Gone are Lord Haldane and Lord Birkenhead; so far as our own Appellate Courts are concerned, Lord Finlay is no more. Lord Buckmaster, great judge though he is, appears to be devoted to the enfranchisement of the unhappy women and men who chafe under the matrimonial yoke. Lord Oxford, who might have been Lord Chancellor, and who was qualified to sit on the Judicial Committee, he also is gone.

It follows that the six Lords of Appeal in Ordinary who are paid six thousand a year for their services, will have to work harder than ever for their salaries, relying on the voluntary and distinguished help of those who, like Lords Reading, Wrenbury, Darling, Warrington and Phillimore, who have in their time filled high judicial office.—*L. J.*, 1928, p. 232.

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*The Gift to Harvard.*—We note with interest that Mr. Chester D. Pugsley, a New York banker, has given 100,000*l.* to the Harvard Law School to establish scholarships in International Law. The gift appears to have been suggested by the Rhodes Scholarship Fund, and it is proposed to establish

a scholarship for each nation of the world, and also for the self-governing British Dominions. The details of the scheme are not available, and are probably not yet settled, but the Harvard Law School is to be congratulated on this act of munificence, and the study of international law throughout the world should be greatly benefited. Everything that encourages such study tends to better understanding between nations, and helps the cause of Peace, on which men's desires are fixed. Of the numerous Law Schools which the United States possesses, Harvard is one of the earliest, and is the most famous. It celebrated its centenary in 1917. One of its earliest professors was Judge Story, whose works on Equity and the Conflict of Laws are still standard authorities. A famous professor of later days was Christopher Columbus Langdell, who in 1870—a pioneer, as his name forecast—started the Case-System of teaching, which has since been a leading feature of American legal training. Others—Thayer, Gray, Ames—have been equally famous over the water, though it is only the late Prof. J. C. Gray, whose name, on account of his work on Perpetuities, has become familiar to practising lawyers here. Enthusiastic as the study of the law has become in this country, it is no less enthusiastic in the States, and Harvard will make good use of Mr. Pugsley's endowment. —*L. J.*, 1928, p. 256.

*An Old Thing Passed Away.*—There is, in the record of the life of Lord Truro, a description of the old ceremony of counting a serjeant-at-law on his admission to the order. It was the duty of the newly-made serjeant to appear in the Court of Common Pleas and there read a "count" in an action of dower. When Martin, B , be came a serjeant the following procedure took place. Martin, B., recited from a document that Ann Ring, widow, by John Jones, her attorney, demanded against Charles Davies the third part of ten messuages, ten barns, etc., in the parish of Ripon, in the County of York, as the dower of the said Ann Ring, of the endowment of William Ring, deceased, theretofore her husband, of which she had nothing.

Thereupon the senior serjeant in Court, Serjeant Channell, demanded that the writ of dower should be read. Serjeant Byles, the next in seniority, remarked: "I imparle." The

L. C. J. then observed : "Be it so. Brother Martin, do you move ?" Brother Martin said he did not, and all was over.

The only ritual of the kind which survives in our unpicturesque day is the admission within the Bar of newly appointed leaders.—*L. J.*, 1928, p. 266.

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"*The Overcrowding of the Bar*".—*Truth*, of October 24, points out that more students sat at the Michaelmas Bar Final than ever sat before, and suggests that "if this increase goes on there will be more men called to the English Bar each year than the whole Bar of Ireland, and two or three times as many as the whole Bar of Scotland". But, as the writer also says, the English Bar is an Imperial one, and of the 400 men called each year, probably 300 intended to seek their fortunes in India, the Colonies, or the public service. "All the same, the odd hundred left over are at least treble the number who can hope to succeed by practice in England," with the result that "there is no profession in the Empire so distressed with poverty and disappointment as the Bar". Such is the conclusion of the writer—who then proceeds to castigate the Benchers of the Middle Temple for "using the funds provided by Lord Rothermere for its relief to add to its misery by bringing impecunious young men of second-rate ability from Oxford and Cambridge, as they are doing, to increase the numbers of the indigent".—*L. J.*, 1928, p. 277.

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*A Matter for the Bar Council.*—A correspondent, referring to *Truth's* remarks, writes : "I am not prepared to follow *Truth* in its criticisms of the Benchers of the Middle Temple, who are quite well able to manage their own affairs. But there is, unfortunately, only too much truth in the reference to poverty and disappointment at the Bar. I think that matters are moving steadily in the wrong direction, and that the time has come when the proper authority should deal with the growing congestion as regards the numbers of barristers trying to earn a precarious livelihood on the one hand, and the steady decline in available work on the other. The causes of this decline are notorious, and should be faced boldly and fearlessly by the only body competent to deal with them as representing the Bar—to wit, the General Council of the Bar. Why that august body is allowed to slumber on in

apathetic contentment whilst the present situation is moving from bad to worse we do not profess to understand. One of these days I fear there may be a rude awakening. What is most wanted, by way of preliminary, is a considered statement of the present position and of the causes which have led up to it. The amount of work available for the Bar cannot be gauged by looking at the High Court lists—significant though they are. The tremendous loss of criminal work on circuit due to recent legislation enlarging the powers of justices is an example of what one section of the Bar has had to face in recent years, and there are other sources of trouble that need to be plainly stated if the general question is to be properly understood." We do not at present feel called upon to express an opinion on the matter, but we commend these remarks to the Bar Council and influential members of the Bar.— *L. J.*, 1928, p. 277.

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*Suppression of Names.*—Recent cases in which witnesses have been allowed to remain anonymous for various reasons have aroused some comment, and seem to show that in some quarters the principles on which a Court should act, in deciding whether or not to allow a witness's name to be suppressed, are being misunderstood or forgotten. Although *Scott* v. *Scott* (1913, A.C. 417) deals with the jurisdiction to hear a particular class of civil proceeding *in camera*, the principles which are enunciated in its judgments will, if applied to the question of whether a witness in a criminal case should or should not be required to disclose his or her name and address, enable a correct conclusion to be reached. Shortly, it may, we think, be said that anonymity may be allowed only where the Court is satisfied that the case is one in which, or is of a class in which, the due administration of justice, as distinct from the personal interests of the witness, will probably suffer if the name is disclosed. In case of blackmail, for example, it is plain that the publication of the names of persons who have put themselves in a position which makes them the subject of blackmail will tend to discourage such persons from invoking the protection of the law; and it is, therefore, necessary, in the general public interest, that names should not be given. But this class of case stands very nearly, if not entirely, alone; and it is to be hoped that a perfectly natural desire to spare a witness whose position is difficult or

painful will not be allowed to over-ride the principle that justice is to be administered in public ; this principle is *pro tanto* infringed where the identity of any party or witness is concealed.—*L. J.*, 1928, p. 277.

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*A Cabman's Revenge.*—Once only in modern times has there been a public outcry against a County Court Judge. This was in 1874, when one of the Welsh Judges found himself compelled to resign after an address relating to his conduct had been presented to the Lord Chancellor. The incident which immediately gave rise to this step was curious. The Judge was driving to Court when he met a cab. The cabman being, as the Judge alleged, on the wrong side of the road, and refusing to get out of the way, His Honour struck the cabby with his whip.. Thereupon the indignant cabman summoned the Judge for assault.

On the day of hearing, the Judge, who was also a magistrate, appeared on the Bench, and espying the cabman said as follows: "I sentence you to imprisonment for seven days at Mold. You interrupted me when I was coming to the Court, and by Act of Parliament I have power to send you to gaol without evidence or any enquiry whatever." In alarm the magistrates' clerk intervened, only to be told that if he opened his mouth again he also would be sent to prison. At this juncture the Chairman appeared, and the case having been called on, the Judge was fined £5.

A few days later a public meeting was held, at which Mr. Watkin Williams, Q.C., M.P., moved that an address be presented to the Lord Chancellor. The motion was carried, and shortly afterwards the Judge resigned on the ground of illhealth.—*L. J.*, 1928, p. 286.

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*Additional Appeal Judges.*—In the King's Speech at the opening of Parliament on Tuesday, it was intimated that a Bill would be introduced authorizing the appointment of two additional members of the Judicial Committee and also of an additional Lord of Appeal. The proposal to increase the numbers of the Judicial Committee repeats the efforts which have been made in this direction for the last two years, and which we have strongly supported. The necessary Bill has passed the House of Lords, but has failed to get through the Commons,

This year the measure is, it appears, to be introduced in the House of Commons first. The proposal to appoint an additional Lord of Appeal is new, and will bring the number of the ordinary Law Lords up to seven. Then, of course, the Lord Chancellor and any ex-Lord Chancellors should also be available, at any rate if they are in receipt of pensions. In spite of the difficulties and disappointments consequent on separate and often dissentient judgments, the judgments in the House of Lords are the most interesting, as well as authoritative, of our modes of judge-made law. They are of quite a different style from the single judgment in the Judicial Committee, and the Law Reports would be much the poorer without, for instance, the judgments of Lord Macnaghten.—*L. J.*, 1928 p. 295.

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*The Judge and the Statute.*—Of the many wonders of our legal system, perhaps the way of a wise judge with a bad statute is the greatest and the best. The most modern example was provided in the Court of Criminal Appeal on Monday, in the case of *Rex* v. *Laws*. Avory, J., at the trial, had noted and lamented that strange anomaly in the Criminal Law Amendment Act of 1922, whereby the defendant, in a charge of indecent assault, was unable to put up the defence of reasonable cause of belief as to the age of the girl, although that defence would have been available for him if the charge had been the much graver one of carnal knowledge.

The L. C. J., Swift and Acton, JJ., heard the appeal. "The Court," said the Lord Chief, after referring in suitable terms to this statutory oversight, "cannot alter the statute; but it can deal with the sentence"; and their Lordships proceeded to do so by reducing the sentence from four months' to one day's imprisonment.—*L. J.*, 1928, p. 307.

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*What Judges Might Do.*—This power of the judges to make the sentence conform with their views, not only of the gravity of a crime, but with their views of what the legislators ought to have said, opens a prospect of exciting speculation which loses its thrill only when one remembers the wisdom and mental sobriety of the English Bench. For, disliking, as so many of them must do, the Parliamentary estimates of right and wrong, what doth hinder them from so agreeing

together in this matter of sentences as to make certain parts of the Criminal Law a dead letter ? Such (and other) powers they have that, were they to abuse them, there is hardly any limit to the excitement and general disorder which might ensue.

Suppose they utilised the aforesaid powers, or some or any of them as a means to enforce their right to increased wages? But we know instinctively they never will. It is beyond the power of any man to instil into their august minds these revolutionary ideas. They will go on trying to make sense of the unintelligible statute; they will continue to help the Legislature.—*L. J.*, 1928, p. 307.

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*A Seventh Lord of Appeal.*—Apparently the Government is aware of the necessity of strengthening the Court of Appeal, and in addition to the two Colonial Judges who were to have been made a year ago, a seventh Lord of Appeal in Ordinary is to be appointed; so the perfect number will be reached. The first two were created under Sec. 4 of the Appellate Jurisdiction Act of 1876; two more, by the gradual and curious process set forth in Sec. 14 of the same Act, whereby one was appointed on the death of two of the paid judges of the Judicial Committee. The Appellate Jurisdiction Act of 1913 authorised His Majesty to appoint two more; and now another Act is needed before the purpose declared in the King's speech can be accomplished.

Already speculation is rife as to the person to be chosen for the filling of this high judicial office. It would be comparatively easy to indicate the best, but extremely hazardous and difficult to foretell the winner of this important event.—*L. J.*, 1928, p. 307.

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*The Advance of Legal Women.*—Remote and fantastic-sounding are the echoes of the loud laughter which, not so very long ago in time, greeted the sallies of that M. P. who pictured the woman Speaker, the woman Premier, and such-like screaming absurdities. For now we learn that there is a grave possibility of a woman Attorney-General in Mr. Hoover's administration. Men must acknowledge that nothing is impossible with women, and male-mockers are few and insignificant.

Meanwhile, in England, the legal women are advancing slowly. Miss Geikie Cobb has for some time, in addition to her work as Counsel, discharged judicial functions as chairman of Courts of Referees in the Metropolitan area. It is said that the Home Secretary is anxious to appoint a woman stipendiary before the sands of his ministerial time and opportunity have run out; and from that point it is easy to visualise the woman County Court Judge. Meanwhile some three hundred males, of the silk and of the stuff, are said to be on the waiting list for the next appointment to the County Court Bench.—*L. J.*, 1928, p. 307.

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## BOOK REVIEWS.

THE LAW OF PROMISSORY NOTES, by T. R. Venkatesa Aiyar, B.A., B.L., Advocate, High Court, Madras. Second edition, 1928. Price Rs. 4-8-0.

Of the various kinds of negotiable instruments, the promissory notes are undoubtedly the most common in this country and this book which gives exhaustive commentaries on the provisions of the Negotiable Instruments Act as applicable to promissory notes will therefore be found useful. The author has given references to the corresponding provisions of the English Bills of Exchange Act and the decisions both of the superior courts of this country and England. This book is one of practical utility as it will save the busy practitioner a great deal of time in going through the digests.

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THE LAW OF IDENTIFICATION, by Nripendra Nath Dhar. Published by M.C. Sarkar & Sons, Calcutta. Price Rs. 2-8-0.

The scope of this work can be judged from the variety of subjects dealt with in it. It is divided into four books, the first book deals with identity of persons ; under this head the author deals with mistaken identity, disputed identity and personal disguisement. He then deals with the evidence of identity, such as family resemblance and physical characteristics. There are also portions of the book dealing with handwriting and finger prints. There is another chapter dealing with the identification in cases of murder, infanticide, poisoning, drowning, hanging and strangulation. The second book deals with the identification of things; and under this head questions